

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NORMAN E. MORRISEY,	§
	§ No. 168, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 91006237DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: July 9, 2010

Decided: August 11, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 11th day of August 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Norman E. Morrissey, filed an appeal from the Superior Court’s March 10, 2010 order adopting the February 24, 2010 report of the Superior Court Commissioner, which recommended that Morrissey’s second motion for postconviction relief pursuant to Superior Court Criminal Rule 61 be denied.¹ We agree and affirm.

(2) The record reflects that, in January 1992, Morrissey was found guilty by a Superior Court jury of twelve counts of Unlawful Sexual

¹ Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

Intercourse in the First Degree, three counts of Robbery in the First Degree, and related crimes.² He was sentenced to a total of one hundred eighty years of Level V incarceration. This Court affirmed Morrissey's convictions on direct appeal.³ Morrissey filed his first motion for postconviction relief in November 1993. The Superior Court denied the motion and this Court dismissed the appeal as untimely.⁴

(3) In this appeal, Morrissey claims that he should not have been charged and convicted under Del. Code Ann. tit. 11, §271(1).⁵ Rather, he claims, his guilt or innocence should have been decided under Section 271(2)(a).⁶ Morrissey argues that the Superior Court abused its discretion by failing to grant his motion for postconviction relief on that ground.

(4) Before addressing the substantive merits of a claim for postconviction relief, the Superior Court must determine whether the

² At trial, the State proved that, in May and June 1991, Morrissey, holding what appeared to be a handgun, forced two couples to accompany him to isolated locations, undress, and perform numerous sex acts over the course of several hours. He also stole valuables from the victims.

³ *Morrissey v. State*, 620 A.2d 207 (Del. 1993).

⁴ *Morrissey v. State*, Del. Supr., No. 24, 1994, Holland, J. (Mar. 3, 1994).

⁵ Under that section, “[a] person is guilty of an offense committed by another person when . . . [a]cting with the state of mind that is sufficient for commission of the offense, he causes an innocent or irresponsible person to engage in conduct constituting the offense”

⁶ Under that section, “[a] person is guilty of an offense committed by another person when . . . the person . . . [s]olicits, requests, commands, importunes or otherwise attempts to cause the other person to commit it”

defendant has satisfied the procedural requirements of Rule 61.⁷ Here, Morrissey's motion is clearly time-barred.⁸ Moreover, his claim that Del. Code Ann. tit. 11, §271(1) is inapplicable to him was asserted previously in his direct appeal. In a reported opinion, this Court engaged in an extensive analysis of the statutory language in determining that the statute was properly applied to establish Morrissey's guilt. As such, his present claim also is procedurally barred as formerly adjudicated.⁹ Moreover, Morrissey has presented no evidence of a miscarriage of justice that would overcome the time and procedural bars.¹⁰ We conclude, therefore, that there was no abuse of discretion on the part of the Superior Court in denying Morrissey's claim.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁷ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

⁸ Super. Ct. Crim. R. 61(i)(1).

⁹ Super. Ct. Crim.R. 61(i)(4).

¹⁰ Super. Ct. Crim. R. 61(i)(5).